

# United States District Court

SOUTHERN

DISTRICT OF NEW YORK

PETER SMITH

05 CV 3320  
SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

FLIK INTERNATIONAL CORP.,  
COMPASS GROUP USA, INC.  
CREDIT SUISSE FIRST BOSTON LLC

TO: (Name and address of defendant)

Flik International Corp.  
3 International Drive  
Rye Brook, NY 10573

Credit Suisse First  
Boston, LLC  
11 Madison Avenue  
New York, NY 10010

Compass Group USA, Inc.  
3 International Drive  
Rye Brook, NY 10573

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Meister Seelig & Fein LLP  
140 East 45th Street, 19th Floor  
New York, NY 10017

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

MAR 29 2005

J. MICHAEL McMAHON

CLERK

DATE

(BY) DEPUTY CLERK

JUDGE KAPLAN  
SOUTHERN

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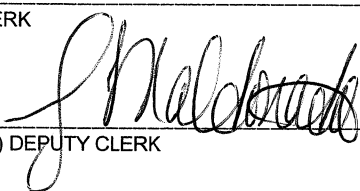
J. MICHAEL McMAHON

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AO 440 (Rev. 10/93) Summons In a Civil Action -SDNY WEB 4/99

<b>RETURN OF SERVICE</b>		
Service of the Summons and Complaint was made by me <sup>1</sup>		DATE
NAME OF SERVER (PRINT)		TITLE
<i>Check one box below to indicate appropriate method of service</i>		
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____ _____		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____ _____		
<input type="checkbox"/> Returned unexecuted: _____ _____ _____		
<input type="checkbox"/> Other (specify): _____ _____ _____		
<b>STATEMENT OF SERVICE FEES</b>		
TRAVEL	SERVICES	TOTAL
<b>DECLARATION OF SERVER</b>		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____</p> <div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> <p>Date</p> </div> <div style="text-align: center;"> <p>Signature of Server</p> </div> </div> <div style="text-align: center; margin-top: 20px;"> <p>Address of Server</p> </div>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

ORIGINAL

AO 440 (Rev. 10/93) Summons in a Civil Action - SDNY WEB 4/99

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SOUTHERN DISTRICT OF NEW YORK

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05 cv 3320  
JUDGE KAPLANJS 44C/SDNY  
REV. 12/2004

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

## PLAINTIFFS

PETER SMITH

## DEFENDANTS

FLIK INTERNATIONAL CORP., COMPASS GROUP USA,  
INC., CREDIT SUISSE FIRST BOSTON LLC

## ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Meister Seelig &amp; Fein LLP

140 East 45th Street, 19th Floor

New York, NY 10017

## ATTORNEYS (IF KNOWN)

N/A

## CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Discrimination action pursuant to 29 U.S. C.A. § 2601 et al

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously AssignedIf yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

(PLACE AN [x] IN ONE BOX ONLY)

## NATURE OF SUIT

## ACTIONS UNDER STATUTES

TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<b>CONTRACT</b>	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<b>LABOR</b>	<b>LABOR</b>
[ ] 110 INSURANCE	[ ] 310 AIRPLANE	[ ] 362 PERSONAL INJURY -	[ ] 610 AGRICULTURE	[ ] 422 APPEAL
[ ] 120 MARINE	[ ] 315 AIRPLANE PRODUCT	MED MALPRACTICE	[ ] 620 FOOD & DRUG	28 USC 158
[ ] 130 MILLER ACT	LIABILITY	[ ] 365 PERSONAL INJURY	[ ] 625 DRUG RELATED	[ ] 423 WITHDRAWAL
[ ] 140 NEGOTIABLE	[ ] 320 ASSAULT, LIBEL &	PRODUCT LIABILITY	SEIZURE OF	28 USC 157
INSTRUMENT	SLANDER	[ ] 368 ASBESTOS PERSONAL	PROPERTY	
[ ] 150 RECOVERY OF	[ ] 330 FEDERAL	INJURY PRODUCT	[ ] 630 LIQUOR LAWS	<b>PROPERTY RIGHTS</b>
OVERPAYMENT &	EMPLOYERS'	LIABILITY	[ ] 640 RR & TRUCK	[ ] 820 COPYRIGHTS
ENFORCEMENT OF	LIABILITY		[ ] 650 AIRLINE REGS	[ ] 830 PATENT
JUDGMENT	[ ] 340 MARINE	<b>PERSONAL PROPERTY</b>	[ ] 660 OCCUPATIONAL	[ ] 840 TRADEMARK
[ ] 151 MEDICARE ACT	[ ] 345 MARINE PRODUCT		SAFETY/HEALTH	
[ ] 152 RECOVERY OF	LIABILITY	[ ] 370 OTHER FRAUD	[ ] 690 OTHER	
DEFAULTED	[ ] 350 MOTOR VEHICLE	[ ] 371 TRUTH IN LENDING		<b>SOCIAL SECURITY</b>
STUDENT LOANS	[ ] 355 MOTOR VEHICLE	[ ] 380 OTHER PERSONAL		[ ] 861 MIA (1395FF)
(EXCL VETERANS)	PRODUCT LIABILITY	PROPERTY DAMAGE	[ ] 710 FAIR LABOR	[ ] 862 BLACK LUNG (923)
[ ] 153 RECOVERY OF	[ ] 360 OTHER PERSONAL	PRODUCT LIABILITY	STANDARDS ACT	[ ] 863 DIWC (405(g))
OVERPAYMENT OF	INJURY		LABOR/MGMT	[ ] 863 DIWW (405(g))
VETERANS BENEFITS			RELATIONS	[ ] 864 SSID TITLE XVI
[ ] 160 STOCKHOLDERS SUITS			LABOR/MGMT	[ ] 865 RSI (405(g))
[ ] 190 OTHER CONTRACT			REPORTING &	
[ ] 195 CONTRACT PRODUCT			DISCLOSURE ACT	<b>FEDERAL TAX SUITS</b>
LIABILITY			[ ] 740 RAILWAY LABOR ACT	[ ] 870 TAXES
[ ] 196 FRANCHISE			[ ] 790 OTHER LABOR	[ ] 871 IRS-THIRD PARTY
			LITIGATION	20 USC 7609
			[ ] 791 EMPL RET INC	
			SECURITY ACT	
<b>REAL PROPERTY</b>	<b>ACTIONS UNDER STATUTES</b>	<b>PRISONER PETITIONS</b>		
[ ] 210 LAND CONDEMNATION	[ ] 441 VOTING	[ ] 510 MOTIONS TO		
[ ] 220 FORECLOSURE	[ ] 442 EMPLOYMENT	VACATE SENTENCE		
[ ] 230 RENT LEASE &	[ ] 443 HOUSING	20 USC 2255		
EJECTMENT	[ ] 444 ACCOMMODATIONS	[ ] 530 HABEAS CORPUS		
[ ] 240 TORTS TO LAND	[ ] 444 WELFARE	[ ] 535 DEATH PENALTY		
[ ] 246 TORT PRODUCT	[ ] 445 AMERICANS WITH	[ ] 540 MANDAMUS & OTHER		
LIABILITY	DISABILITIES -	[ ] 550 CIVIL RIGHTS		
[ ] 290 ALL OTHER	EMPLOYMENT	[ ] 555 PRISON CONDITION		
REAL PROPERTY	[ ] 446 AMERICANS WITH			
	DISABILITIES -OTHER			
	[ ] 440 OTHER CIVIL RIGHTS			

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?  
IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN x IN ONE BOX ONLY)

## ORIGIN

- ☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

(PLACE AN x IN ONE BOX ONLY)

## BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [ ] 1 [ ] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [ ] 3 [ ] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [ ] 5 [ ] 5
CITIZEN OF ANOTHER STATE	[ ] 2 [ ] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] 4 [ ] 4	FOREIGN NATION	[ ] 6 [ ] 6

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Peter Smith  
17 Lowell Road  
Port Washington, NY 11050  
Suffolk

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Flik International Corp.  
3 International Drive  
Rye Brook, NY 10573  
Westchester

Credit Suisse First  
Boston, LLC  
11 Madison Avenue  
New York, NY 10010

Compass Group USA, Inc.  
3 International Drive  
Rye Brook, NY 10573  
Westchester

## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE  
(DO NOT check either box if this a PRISONER PETITION.)

DATE

SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

3/29/05

*Laurel C. Weintraub*

[ ] NO

☒ YES (DATE ADMITTED Mo. \_\_\_\_\_ Yr. 1996)

RECEIPT #

Attorney Bar Code # RC-1614

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

J Michael McMahon, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

# United States District Court

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DISTRICT OF NEW YORK

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## SUMMONS IN A CIVIL CASE

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Jeffrey A. Kimmel (JK-0584)  
Racquel Crespi Weintraub (RW-1614)  
MEISTER SEELIG & FEIN LLP  
140 East 45<sup>th</sup> St., 19<sup>th</sup> Fl.  
New York, NY 10017  
(212) 655-3500  
*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
PETER SMITH,

Civ. Action No.

Plaintiff,

-against-

**COMPLAINT WITH  
JURY DEMAND**

FLIK INTERNATIONAL CORP., COMPASS GROUP  
USA, INC., CREDIT SUISSE FIRST BOSTON, LLC,

Defendants.  
-----X

Plaintiff, Peter Smith ("Plaintiff"), as and for his complaint, by his undersigned counsel,  
alleges as follows:

**INTRODUCTION**

1. This is an action to remedy violations of the rights of Plaintiff under the Family Medical Leave Act, 29 U.S.C.A. §§ 2601 *et seq.* ("FMLA"), New York State Human Rights Law, Exec. Law § 296 *et seq.* ("NYHRL"), and the New York City Human Rights Law, Admin. Code § 8-107 *et seq.* ("NYCHRL"), by his former employers Flik International Corp. ("Flik"), Compass Group USA (NAD) ("Compass") and Credit Suisse First Boston, LLC ("CSFB") (Flik, Compass, and CSFB are sometimes referred to herein collectively as "Defendants").

### **PARTIES**

2. Plaintiff, Smith, is a male citizen of the United States and was an “employee” of Defendants within the meaning of 29 U.S.C.A § 2611(2) (A) at all times relevant to this action. Defendants were employers within the meaning of 29 U.S.C.A. § 2611 (4) (A) at all times relevant to this action.

3. Defendant Flik is a New York corporation doing business in the County, City and State of New York, with offices in Rye Brook, New York.

4. Defendant Compass is a Delaware corporation doing business in the County, City and State of New York, with its principal offices located in Rye Brook, New York.

5. Defendant CSFB is a Delaware limited liability company with its principal offices located in the County, City and State of New York.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action under 29 U.S.C.A. § 2617 and 28 U.S.C.A § 1331 and has pendant jurisdiction over the claims set forth herein arising out of New York state and local law. Venue in this Court is proper pursuant to 28 U.S.C.A § 1391(b) because Defendants’ offices are in this district and the events giving rise to this action all occurred in this district.

### **PROCEDURAL REQUIREMENTS**

7. Prior to the commencement of this action, Plaintiff served a copy of this Complaint upon the New York City Commission on Human Rights and the Corporate Counsel of the City of New York in accordance with N.Y.C. Admin. Code § 8-502(C).

## **FACTS**

### **Employment Background**

8. Plaintiff was hired by Defendant Flik on or about August 1999 as CSFB Conference and Catering Director.

9. During the interview process, Plaintiff met with Arlett Jackson (“Jackson”) at Flik and Jay Silverstein (“Silverstein”), Vice President of Food Service Operations for CSFB.

10. As CSFB Conference and Catering Director, Smith was provided and utilized a CSFB e-mail address and telephone number.

11. From August 1999 until the termination of his employment on March 31, 2003 (the “Employment Period”), Plaintiff performed his duties and responsibilities well and was commended for the quality of his performance.

12. In fact during the Employment Period, Smith received three merit based increases in his base salary.

13. In addition, during the Employment Period, Smith received three employment evaluations. Each of those employment evaluations were positive. As of the most recent evaluation in September 2002, Smith was advised by Jackson that he was being considered for a promotion.

14. During the Employment Period, Jackson, of Flik, was Smith’s direct supervisor.

15. In addition to Jackson, Silverstein also supervised Smith. Silverstein frequently interacted with Smith and other Flik employees and exercised direct control

over their activities. He was also involved in the decision making process concerning the hiring, promotion, discipline and termination of Flik personnel.

16. Flik's personnel policies were also established and dictated by its parent company, Compass.

**The Emergency Medical Leave Request Pursuant to FMLA**

17. On November 15, 2002, Smith's daughter Natalie was born.

18. After the birth of his daughter, Jackson repeatedly voiced her opinion that taking care of children should be the responsibility of the mother, not the father.

19. On several occasions when Smith sought time off from work, or was required to leave work early to take care of Natalie, Jackson told him that this should be his wife's responsibility, not his, and that Flik needed him to be at work.

20. In contrast, when Smith's female colleagues, who were also supervised by Jackson and Silverstein, sought time off to care for their children, neither Jackson nor Silverstein protested and such time off was routinely granted without comment or criticism.

21. On Friday, March 14, 2003, Smith received an alarming report in connection with the medical examination of Natalie. Smith notified Jackson early morning on Monday March 17, 2003 that he would not be able to come to work on that day because he would be accompanying his wife and Natalie to an emergency appointment with a medical specialist at Cornell Medical Center.

22. On Monday, March 17, 2003, Smith learned that his four month old daughter would have to undergo emergency heart surgery, which was quickly scheduled for the following morning.

23. Immediately after learning that his daughter would undergo emergency heart surgery the following morning, on the afternoon of March 17, 2003 Smith contacted Jackson and told her that due to the scheduled surgery he would not be able to return to work the following day. Smith fully described to Jackson the nature of the medical emergency.

24. After the surgery, Smith contacted Jackson and told her that the surgery seemed to have gone smoothly, but that he would need to take some time off to help take care of Natalie.

25. On Thursday, March 20, 2003, Smith called Jackson from the intensive care unit at Cornell Medical Center. During that call, Smith requested to take six weeks of FMLA leave to care for Natalie.

26. In response to Smith's request for six weeks of leave, Jackson responded that his leave was approved and that she would advance the processing of his FMLA leave request.

27. On March 24, 2003, Smith called Jackson to find out about the FMLA formalities. She told him that the paperwork would soon be sent out to him.

**Termination of Smith's Employment**

28. On Monday, March 31, 2003, Jackson telephoned Smith with a Compass Human Resources employee on the phone. Smith was told that Silverstein and Jackson had decided to terminate his employment effective immediately.

29. Defendants did not offer Smith a transfer to another position within Flik, Compass or CSFB respectively.

30. In contrast, a female colleague of Smith, Jacquie Baertschi (“Baertschi”), who held a position comparable to Smith’s, was also notified that her position was to be eliminated, but was told that Defendants would attempt to place her in another position.

31. In fact, Baertschi was ultimately placed in another position at Flik.

32. Despite the fact that Smith’s performance while employed by Defendants was at all times excellent, and that he was more qualified than Baertschi, Smith was not offered another position within Flik, while Baertschi, a female, was offered another position.

33. Prior to his taking FMLA leave and the subsequent termination of his employment, Jackson had indicated to Smith in his September 2002 review that he was up for a promotion.

34. Upon information and belief, Smith was not offered another position by Defendants because of the double standard applied to, and disparate treatment of, men as compared to women employed by Defendants.

35. Upon information and belief, the decision to terminate Smith was based on gender bias and an intolerance of men in managerial positions taking leave for family care—a traditionally female role.

36. Smith’s employment was terminated in retaliation for his exercise of his rights under the FMLA.

37. Upon information and belief, female employees of Defendants who took time off to care for their children were not subject to comment, criticism and retaliation at the hands of Defendants as a result of their need to care for their children.

38. The aforementioned unlawful acts of Defendants were purposeful and willful.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(For violation of the FMLA)**

39. Plaintiff hereby repeats and realleges each allegation contained in paragraphs 1-38 above as if fully set forth herein.

40. As a proximate cause of Defendants' unlawful termination of Plaintiff's employment in retaliation for his exercise of his rights under the FMLA, Plaintiff has suffered and continues to suffer substantial losses, including the loss of past and future earnings, bonuses, promotional opportunities, deferred compensation and other employment benefits.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(For violation of the NYSHRL)**

41. Plaintiff hereby repeats and realleges each allegation contained in paragraphs 1-38 above as if fully set forth herein.

42. Defendants' disparate treatment of Plaintiff, including Defendants' termination of Plaintiff's employment on the basis of his gender, was in violation of the New York State Human Rights Law.

43. Plaintiff has been unable, despite reasonable efforts, to find comparable employment.

44. As a result of the foregoing, Plaintiff has been denied employment, has lost wages, benefits, promotion opportunities and bonuses, and therefore incurred damages.



**AS AND FOR A THIRD CAUSE OF ACTION**  
**(For violation of the NYCHRL)**

45. Plaintiff hereby repeats and realleges each allegation contained in paragraphs 1-38 above as if fully set forth herein.

46. Defendants' disparate treatment of Plaintiff, including but not limited to Defendants' termination of Plaintiff's employment on the basis of his gender, was a violation of the New York City Human Rights Law.

47. As a proximate result of Defendants' unlawful conduct, Plaintiff has been denied continued employment, has lost wages, benefits, promotional opportunities and bonuses, and has thereby incurred damages.

48. Plaintiff has been unable, despite reasonable efforts, to find comparable employment.

**WHEREFORE**, Plaintiff requests that this Court grant judgment to him containing the following relief:

1. An order prohibiting Defendants from continuing or maintaining the policy, practice and/or custom of denying job benefits to employees on the basis of gender;

2. Actual damages in an amount to be determined at trial, for loss of wages, benefits and promotional opportunities, including an award of front pay compensating Plaintiff for loss of future salary and benefits;

3. An award of punitive damages in an amount to be determined at trial, but in any event not less than \$5,000,000;

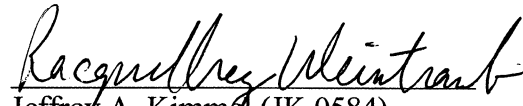
4. An award to Plaintiff of the costs of this action, together with his reasonable attorneys' fees; and

5. Such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a jury of six persons for all claims stated herein.

Dated: New York, New York  
March 29, 2005

  
Jeffrey A. Kimmel (JK 0584)  
Racquel Crespi Weintraub (RW 1614)  
Meister Seelig & Fein LLP  
140 East 45<sup>th</sup> Street, 19<sup>th</sup> Fl.  
New York, New York 10017  
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JUDGE KAPLAN

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PETER SMITH,

Plaintiff,

-against-

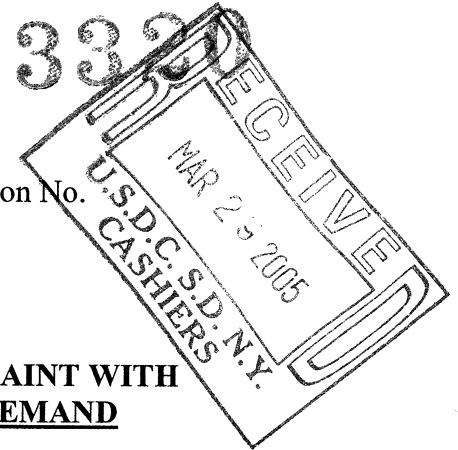
FLIK INTERNATIONAL CORP., COMPASS GROUP  
USA, INC., CREDIT SUISSE FIRST BOSTON, LLC,

Defendants.  
-----X

Plaintiff, Peter Smith ("Plaintiff"), as and for his complaint, by his undersigned counsel,  
alleges as follows:

Civ. Action No.

**COMPLAINT WITH  
JURY DEMAND**



**INTRODUCTION**

1. This is an action to remedy violations of the rights of Plaintiff under the Family Medical Leave Act, 29 U.S.C.A. §§ 2601 *et seq.* ("FMLA"), New York State Human Rights Law, Exec. Law § 296 *et seq.* ("NYHRL"), and the New York City Human Rights Law, Admin. Code § 8-107 *et seq.* ("NYCHRL"), by his former employers Flik International Corp. ("Flik"), Compass Group USA (NAD) ("Compass") and Credit Suisse First Boston, LLC ("CSFB") (Flik, Compass, and CSFB are sometimes referred to herein collectively as "Defendants").

### **PARTIES**

2. Plaintiff, Smith, is a male citizen of the United States and was an “employee” of Defendants within the meaning of 29 U.S.C.A § 2611(2) (A) at all times relevant to this action. Defendants were employers within the meaning of 29 U.S.C.A. § 2611 (4) (A) at all times relevant to this action.

3. Defendant Flik is a New York corporation doing business in the County, City and State of New York, with offices in Rye Brook, New York.

4. Defendant Compass is a Delaware corporation doing business in the County, City and State of New York, with its principal offices located in Rye Brook, New York.

5. Defendant CSFB is a Delaware limited liability company with its principal offices located in the County, City and State of New York.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action under 29 U.S.C.A. § 2617 and 28 U.S.C.A § 1331 and has pendant jurisdiction over the claims set forth herein arising out of New York state and local law. Venue in this Court is proper pursuant to 28 U.S.C.A § 1391(b) because Defendants’ offices are in this district and the events giving rise to this action all occurred in this district.

### **PROCEDURAL REQUIREMENTS**

7. Prior to the commencement of this action, Plaintiff served a copy of this Complaint upon the New York City Commission on Human Rights and the Corporate Counsel of the City of New York in accordance with N.Y.C. Admin. Code § 8-502(C).

## **FACTS**

### **Employment Background**

8. Plaintiff was hired by Defendant Flik on or about August 1999 as CSFB Conference and Catering Director.

9. During the interview process, Plaintiff met with Arlett Jackson (“Jackson”) at Flik and Jay Silverstein (“Silverstein”), Vice President of Food Service Operations for CSFB.

10. As CSFB Conference and Catering Director, Smith was provided and utilized a CSFB e-mail address and telephone number.

11. From August 1999 until the termination of his employment on March 31, 2003 (the “Employment Period”), Plaintiff performed his duties and responsibilities well and was commended for the quality of his performance.

12. In fact during the Employment Period, Smith received three merit based increases in his base salary.

13. In addition, during the Employment Period, Smith received three employment evaluations. Each of those employment evaluations were positive. As of the most recent evaluation in September 2002, Smith was advised by Jackson that he was being considered for a promotion.

14. During the Employment Period, Jackson, of Flik, was Smith’s direct supervisor.

15. In addition to Jackson, Silverstein also supervised Smith. Silverstein frequently interacted with Smith and other Flik employees and exercised direct control

over their activities. He was also involved in the decision making process concerning the hiring, promotion, discipline and termination of Flik personnel.

16. Flik's personnel policies were also established and dictated by its parent company, Compass.

**The Emergency Medical Leave Request Pursuant to FMLA**

17. On November 15, 2002, Smith's daughter Natalie was born.

18. After the birth of his daughter, Jackson repeatedly voiced her opinion that taking care of children should be the responsibility of the mother, not the father.

19. On several occasions when Smith sought time off from work, or was required to leave work early to take care of Natalie, Jackson told him that this should be his wife's responsibility, not his, and that Flik needed him to be at work.

20. In contrast, when Smith's female colleagues, who were also supervised by Jackson and Silverstein, sought time off to care for their children, neither Jackson nor Silverstein protested and such time off was routinely granted without comment or criticism.

21. On Friday, March 14, 2003, Smith received an alarming report in connection with the medical examination of Natalie. Smith notified Jackson early morning on Monday March 17, 2003 that he would not be able to come to work on that day because he would be accompanying his wife and Natalie to an emergency appointment with a medical specialist at Cornell Medical Center.

22. On Monday, March 17, 2003, Smith learned that his four month old daughter would have to undergo emergency heart surgery, which was quickly scheduled for the following morning.

23. Immediately after learning that his daughter would undergo emergency heart surgery the following morning, on the afternoon of March 17, 2003 Smith contacted Jackson and told her that due to the scheduled surgery he would not be able to return to work the following day. Smith fully described to Jackson the nature of the medical emergency.

24. After the surgery, Smith contacted Jackson and told her that the surgery seemed to have gone smoothly, but that he would need to take some time off to help take care of Natalie.

25. On Thursday, March 20, 2003, Smith called Jackson from the intensive care unit at Cornell Medical Center. During that call, Smith requested to take six weeks of FMLA leave to care for Natalie.

26. In response to Smith's request for six weeks of leave, Jackson responded that his leave was approved and that she would advance the processing of his FMLA leave request.

27. On March 24, 2003, Smith called Jackson to find out about the FMLA formalities. She told him that the paperwork would soon be sent out to him.

#### **Termination of Smith's Employment**

28. On Monday, March 31, 2003, Jackson telephoned Smith with a Compass Human Resources employee on the phone. Smith was told that Silverstein and Jackson had decided to terminate his employment effective immediately.

29. Defendants did not offer Smith a transfer to another position within Flik, Compass or CSFB respectively.

30. In contrast, a female colleague of Smith, Jacquie Baertschi (“Baertschi”), who held a position comparable to Smith’s, was also notified that her position was to be eliminated, but was told that Defendants would attempt to place her in another position.

31. In fact, Baertschi was ultimately placed in another position at Flik.

32. Despite the fact that Smith’s performance while employed by Defendants was at all times excellent, and that he was more qualified than Baertschi, Smith was not offered another position within Flik, while Baertschi, a female, was offered another position.

33. Prior to his taking FMLA leave and the subsequent termination of his employment, Jackson had indicated to Smith in his September 2002 review that he was up for a promotion.

34. Upon information and belief, Smith was not offered another position by Defendants because of the double standard applied to, and disparate treatment of, men as compared to women employed by Defendants.

35. Upon information and belief, the decision to terminate Smith was based on gender bias and an intolerance of men in managerial positions taking leave for family care—a traditionally female role.

36. Smith’s employment was terminated in retaliation for his exercise of his rights under the FMLA.

37. Upon information and belief, female employees of Defendants who took time off to care for their children were not subject to comment, criticism and retaliation at the hands of Defendants as a result of their need to care for their children.



38. The aforementioned unlawful acts of Defendants were purposeful and willful.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(For violation of the FMLA)**

39. Plaintiff hereby repeats and realleges each allegation contained in paragraphs 1-38 above as if fully set forth herein.

40. As a proximate cause of Defendants' unlawful termination of Plaintiff's employment in retaliation for his exercise of his rights under the FMLA, Plaintiff has suffered and continues to suffer substantial losses, including the loss of past and future earnings, bonuses, promotional opportunities, deferred compensation and other employment benefits.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(For violation of the NYSHRL)**

41. Plaintiff hereby repeats and realleges each allegation contained in paragraphs 1-38 above as if fully set forth herein.

42. Defendants' disparate treatment of Plaintiff, including Defendants' termination of Plaintiff's employment on the basis of his gender, was in violation of the New York State Human Rights Law.

43. Plaintiff has been unable, despite reasonable efforts, to find comparable employment.

44. As a result of the foregoing, Plaintiff has been denied employment, has lost wages, benefits, promotion opportunities and bonuses, and therefore incurred damages.